

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for the Alteration of a Public Crossing of the Union Pacific Railroad Co. Tracks with STH 59/164 in the City of Waukesha, Waukesha County

9040-RX-1219

FINAL DECISION

By letter dated September 7, 2005, the Wisconsin Department of Transportation (DOT) filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the alteration of a public crossing of the Union Pacific Railroad Co. (UP) tracks with STH 59 (Pearl Street) in the City of Waukesha, Waukesha County (crossing no. 177 294D/ MP 17.92). The DOT proposes to add 10'-wide bicycle paths on each side of STH 59/164 in the 2007 construction season. The paths would be 10' behind the face of curbs and would cross the tracks at a 90° angle. Note: The hearing notice identified the crossing as "STH 59 (Pearl Street)", which is incorrect. The corrected name is used in this decision.

Pursuant to due notice, public hearing was held in this matter on November 16, 2005, in Waukesha, Wisconsin with hearing examiner Douglas S. Wood presiding.

On December 19, 2005, the hearing examiner issued a proposed decision. The OCR received comments generally supporting the proposed decision from Tom Hoffman, an individual that uses the bike path. Mr. Hoffman expressed support for a mid-block pedestrian-activate signal at the location where the path crosses the roadway. This possibility was considered at the hearing and rejected as being too disruptive to highway traffic and too close to other standard signalized roadway intersections. The Commissioner adopts the proposed decision as final without change.

Appearances:

**Parties**

Wisconsin Department of Transportation, Petitioner  
by  
Gregory A. Baer  
Railroad Project Coordination Engineer  
PO Box 7914  
Madison, WI 53707-7914

In Support:

City of Waukesha  
by  
Dale Evans, Engineering Technician  
130 Delafield Street  
Waukesha, WI 53188

In Opposition:

Union Pacific Railroad Co.  
by  
Brian Baird, Attorney  
735 N. Water Street  
Milwaukee, WI 53202

### Findings of Fact

#### THE COMMISSIONER FINDS:

The DOT and the City of Waukesha propose to extend the New Berlin Bike Trail across the UP tracks on each side of the STH 59/164 highway/rail crossing of the Union Pacific Railroad Co. tracks. The path will be 10'-wide with an asphalt surface located 8' behind the face of curb on each side.

STH 59/164 consists of two 49'-wide roadways and a 24'-wide median. Each consists of three traffic lanes. STH 59/164 intersects the UP tracks at an angle of about 86°. The crossing consists of one spur track.

STH 59/164 carried 38,000 ADT (average daily traffic) in 2000. The speed limit is 45 mph, however, observed typical speeds are higher than 45 mph. The New Berlin Bike path carries about 55-100 users per day on average.

The railroad currently operates 2 train movements per day on 3-4 days/week over the proposed crossing location at a speed of 10 mph. The tracks end a short distance west of STH 59/164.

The bike trail runs on a WE Energies easement parallel to the UP tracks about 150' north of the tracks. At present trail users proceed directly across STH 59/164 at an unmarked crosswalk at that location. Due to the highway traffic volume and traffic speed it is hazardous for bikers and pedestrians to cross the roadway at that location. For less experienced bikers the roadway presents what is essentially a barrier to travel. These users often simply turn around at the roadway.

The DOT proposal would provide an alternative route across STH 59/164 by extending the trail about 650' south of the tracks on each side of the highway to the next roadway intersection at Pearl Street. That intersection is controlled by traffic signals. DOT plans to add pedestrian 'call buttons' to those traffic signals.

At the hearing there was discussion about possibly installing a gate at the driveway entrances to the WE Energies where the trail currently crosses the roadway. The purpose of the gate would be to discourage bikers from crossing the roadway at that location. The OCR would prefer that these gates not be installed at those locations as the gates would increase traffic over the new crossings (to the extent that bikers don't simply go around such gates).

The roadway crossing presently has 12" cantilevered signals with mast-mounted signals in the median and gates for warning devices. The signal units are being upgraded to LED lamps as part of

a statewide OCR project. In order to adequately protect public safety at the bike trail crossings, it is necessary to add backlights to the existing signals adjacent to the bike crossings and add one crossbuck on the approach opposite from the signals. In addition, a bell shall be installed on the signals adjacent to the bike trail crossings.

Either a concrete panel or timber-plank and asphalt crossing surface is acceptable at the City's discretion.

In summary, the alteration of the crossing at-grade of the UP tracks with STH 59/164 will promote public safety and convenience by providing a safer alternative route for users of the New Berlin Bike Trail.

**Source of funding:** The City of Waukesha and the DOT shall fund the project. No costs will be apportioned to the UP.

#### Ultimate Conclusions on the Issues

##### THE COMMISSIONER CONCLUDES:

1. That the alteration of the crossing at-grade of STH 59/164 with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation in the City of Waukesha, Waukesha County will promote public safety and convenience.

2. That in order to adequately protect and promote public safety, it is necessary to install and maintain a bell and backlights on the signals adjacent to the bike path crossing and reflective crossbucks on the opposite side at each crossing.

3. That it is reasonable that the Union Pacific Railroad Co. bear no part of the cost for the crossing construction.

#### Conclusion of Law

##### THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall install and maintain two bicycle path crossings at-grade of STH 59/164 with its tracks in accordance with the design plans of the Wisconsin Department of Transportation and the City of Waukesha in the City of Waukesha, Waukesha County by **June 1, 2007**. (Crossing No. 177 294D/ MP 17.92)

2. That the **Union Pacific Railroad Co.** shall install and maintain a bell and backlights on the signals adjacent to the bike path crossing and reflective crossbucks on the opposite side at each crossing and other appropriate appurtenances in accordance with such plans as are filed with and approved by the Office of the Commissioner of Railroads at the crossing of its tracks with the bicycle path crossings along STH 59/164 at-grade in the City of Waukesha, Waukesha County by **June 1, 2007** (Crossing No. 177 294D/ MP 17.92).

3. That the **Union Pacific Railroad Co.** shall submit to the Office of the Commissioner of Railroads signal and circuit plans with the cost estimate of its proposed installation and upon completion of the signal project, a detailed statement of the actual cost to the Office and to the Wisconsin Department of Transportation.

4. That the signal installation work herein ordered shall not begin until the district office of the Wisconsin Department of Transportation informs the railroad that they may start such work and such start notice will not be issued until appropriate federal aid or other funding arrangements have been assured. The cost of the new project initiated before the start notice will not be reimbursed with public funds and shall be the responsibility of the railroad.

5. That the **Union Pacific Railroad Co.** shall bear no part of the cost of the crossing construction, except for any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

6. That jurisdiction is retained.

Dated at Madison, Wisconsin, (January 27, 2006).

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen  
Commissioner of Railroads